

105TH CONGRESS
2D SESSION

H. R. 3246

To assist small businesses and labor organizations in defending themselves against government bureaucracy; to ensure that employees entitled to reinstatement get their jobs back quickly; to protect the right of employers to have a hearing to present their case in certain representation cases; and to prevent the use of the National Labor Relations Act for the purpose of disrupting or inflicting economic harm on employers.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1998

Mr. GOODLING (for himself, Mr. FAWELL, and Mr. TALENT) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To assist small businesses and labor organizations in defending themselves against government bureaucracy; to ensure that employees entitled to reinstatement get their jobs back quickly; to protect the right of employers to have a hearing to present their case in certain representation cases; and to prevent the use of the National Labor Relations Act for the purpose of disrupting or inflicting economic harm on employers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fairness for Small
3 Business and Employees Act of 1998”.

4 **TITLE I—TRUTH IN**
5 **EMPLOYMENT**

6 **SEC. 101. FINDINGS.**

7 Congress finds that:

8 (1) An atmosphere of trust and civility in labor-
9 management relationships is essential to a produc-
10 tive workplace and a healthy economy.

11 (2) The tactic of using professional union orga-
12 nizers and agents to infiltrate a targeted employer’s
13 workplace, a practice commonly referred to as “salt-
14 ing” has evolved into an aggressive form of harass-
15 ment not contemplated when the National Labor Re-
16 lations Act was enacted and threatens the balance of
17 rights which is fundamental to our system of collec-
18 tive bargaining.

19 (3) Increasingly, union organizers are seeking
20 employment with nonunion employers not because of
21 a desire to work for such employers but primarily to
22 organize the employees of such employers or to in-
23 flict economic harm specifically designed to put non-
24 union competitors out of business, or to do both.

25 (4) While no employer may discriminate against
26 employees based upon the views of employees con-

cerning collective bargaining, an employer should have the right to expect job applicants to be primarily interested in utilizing the skills of the applicants to further the goals of the business of the employer.

SEC. 102. PURPOSES.

The purposes of this title are—

(1) to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining;

(2) to preserve the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act; and

(3) to alleviate pressure on employers to hire individuals who seek or gain employment in order to disrupt the workplace of the employer or otherwise inflict economic harm designed to put the employer out of business.

SEC. 103. PROTECTION OF EMPLOYER RIGHTS.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended by adding after and below paragraph (5) the following:

“Nothing in this subsection shall be construed as requiring an employer to employ any person who is not a bona

1 fide employee applicant, in that such person seeks or has
 2 sought employment with the employer with the primary
 3 purpose of furthering another employment or agency sta-
 4 tus: *Provided*, That this sentence shall not affect the rights
 5 and responsibilities under this Act of any employee who
 6 is or was a bona fide employee applicant.”.

7 **TITLE II—FAIR HEARING**

8 **SEC. 201. FINDINGS.**

9 The Congress finds the following:

10 (1) Bargaining unit determinations by their na-
 11 ture require the type of fact-specific analysis that
 12 only case-by-case adjudication allows.

13 (2) The National Labor Relations Board has
 14 for decades held hearings to determine the appro-
 15 priateness of certifying a single location bargaining
 16 unit.

17 (3) The imprecision of a blanket rule limiting
 18 the factors considered material to determining the
 19 appropriateness of a single location bargaining unit
 20 detracts from the National Labor Relations Act’s
 21 goal of promoting stability in labor relations.

22 **SEC. 202. PURPOSE.**

23 The purpose of this title is to ensure that the Na-
 24 tional Labor Relations Board conducts a hearing process
 25 and specific analysis of whether or not a single location

1 bargaining unit is appropriate, given all of the relevant
2 facts and circumstances of a particular case.

3 **SEC. 203. REPRESENTATIVES AND ELECTIONS.**

4 Section 9(c) of the National Labor Relations Act (29
5 U.S.C. 159(c)) is amended by adding at the end the fol-
6 lowing:

7 “(6) If a petition for an election requests the Board
8 to certify a unit which includes the employees employed
9 at one or more facilities of a multi-facility employer, and
10 in the absence of an agreement by the parties (stipulation
11 for certification upon consent election or agreement for
12 consent election) regarding the appropriateness of the bar-
13 gaining unit at issue for purposes of subsection (b), the
14 Board shall provide for a hearing upon due notice to deter-
15 mine the appropriateness of the bargaining unit. In mak-
16 ing its determination, the Board shall consider functional
17 integration, centralized control, common skills, functions
18 and working conditions, permanent and temporary em-
19 ployee interchange, geographical separation, local auton-
20 omy, the number of employees, bargaining history, and
21 such other factors as the Board considers appropriate.

22 **TITLE III—JUSTICE ON TIME**

23 **SEC. 301. FINDINGS.**

24 The Congress finds the following:

1 (1) An employee has a right under the National
2 Labor Relations Act to be free from discrimination
3 with regard to hire or tenure of employment or any
4 term or condition of employment to encourage or
5 discourage membership in any labor organization.
6 The Congress, the National Labor Relations Board,
7 and the courts have recognized that the discharge of
8 an employee to encourage or discourage union mem-
9 bership has a particularly chilling effect on the exer-
10 cise of rights provided under section 7.

11 (2) Although an employee who has been dis-
12 charged because of support or lack of support for a
13 labor organization has a right to be reinstated to the
14 previously held position with backpay, reinstatement
15 is often ordered months and even years after the ini-
16 tial discharge due to the lengthy delays in the proc-
17 essing of unfair labor practice charges by the Na-
18 tional Labor Relations Board and to the several lay-
19 ers of appeal under the National Labor Relations
20 Act.

21 (3) In order to minimize the chilling effect on
22 the exercise of rights provided under section 7
23 caused by an unlawful discharge and to maximize
24 the effectiveness of the remedies for unlawful dis-
25 crimination under the National Labor Relations Act,

1 the National Labor Relations Board should resolve
2 in a timely manner all unfair labor practice com-
3 plaints alleging that an employee has been unlaw-
4 fully discharged to encourage or discourage member-
5 ship in a labor organization.

6 (4) Expeditious resolution of such complaints
7 would benefit all parties not only by ensuring swift
8 justice, but also by reducing the costs of litigation
9 and backpay awards.

10 **SEC. 302. PURPOSE.**

11 The purpose of this title is to ensure that the Na-
12 tional Labor Relations Board resolves in a timely manner
13 all unfair labor practice complaints alleging that an em-
14 ployee has been unlawfully discharged to encourage or dis-
15 courage membership in a labor organization.

16 **SEC. 303. TIMELY RESOLUTION.**

17 Section 10(m) of the National Labor Relations Act
18 is amended by adding at the end the following new sen-
19 tence: “Whenever a complaint is issued as provided in sub-
20 section (b) upon a charge that any person has engaged
21 in or is engaging in an unfair labor practice within the
22 meaning of subsection (a)(3) or (b)(2) of section 8 involv-
23 ing an unlawful discharge, the Board shall state its find-
24 ings of fact and issue and cause to be served on such per-
25 son an order requiring such person to cease and desist

1 from such unfair labor practice and to take such affirma-
 2 tive action, including reinstatement of an employee with
 3 or without backpay, as will effectuate the policies of this
 4 Act, or shall state its findings of fact and issue an order
 5 dismissing the said complaint, not later than 365 days
 6 after the filing of the unfair labor practice charge with
 7 the Board except in cases of extreme complexity. The
 8 Board shall submit a report annually to the Committee
 9 on Education and the Workforce of the House of Rep-
 10 resentatives and the Committee on Labor and Human Re-
 11 sources of the Senate regarding any cases pending for
 12 more than 1 year, including an explanation of the factors
 13 contributing to such a delay and recommendations for
 14 prompt resolution of such cases.”.

15 **SEC. 304. REGULATIONS.**

16 The Board may issue such regulations as are nec-
 17 essary to carry out the purposes of this title.

18 **TITLE IV—ATTORNEYS FEES**

19 **SEC. 401. FINDINGS AND PURPOSE.**

20 (a) FINDINGS.—The Congress finds as follows:

21 (1) Certain small businesses and labor organi-
 22 zations are at a great disadvantage in terms of ex-
 23 pertise and resources when facing actions brought by
 24 the National Labor Relations Board.

1 (2) The attempt to “level the playing field” for
2 small businesses and labor organizations by means
3 of the Equal Access to Justice Act has proven ineff-
4 fective and has been underutilized by these small en-
5 tities in their actions before the National Labor Re-
6 lations Board.

7 (3) The greater expertise and resources of the
8 National Labor Relations Board as compared with
9 those of small businesses and labor organizations ne-
10 cessitate a standard that awards fees and costs to
11 certain small entities when they prevail against the
12 National Labor Relations Board.

13 (b) PURPOSE.—It is the purpose of this title—

14 (1) to ensure that certain small businesses and
15 labor organizations will not be deterred from seeking
16 review of, or defending against, actions brought
17 against them by the National Labor Relations Board
18 because of the expense involved in securing vindica-
19 tion of their rights;

20 (2) to reduce the disparity in resources and ex-
21 pertise between certain small businesses and labor
22 organizations and the National Labor Relations
23 Board; and

24 (3) to make the National Labor Relations
25 Board more accountable for its enforcement actions

1 against certain small businesses and labor organiza-
2 tions by awarding fees and costs to these entities
3 when they prevail against the National Labor Rela-
4 tions Board.

5 **SEC. 402. AMENDMENT TO NATIONAL LABOR RELATIONS**
6 **ACT.**

7 The National Labor Relations Act (29 U.S.C. 151
8 and following) is amended by adding at the end the follow-
9 ing new section:

10 “AWARDS OF ATTORNEYS’ FEES AND COSTS

11 “SEC. 20. (a) ADMINISTRATIVE PROCEEDINGS.—An
12 employer who, or a labor organization that—

13 “(1) is the prevailing party in an adversary ad-
14 judication conducted by the Board under this or any
15 other Act, and

16 “(2) had not more than 100 employees and a
17 net worth of not more than \$1,400,000 at the time
18 the adversary adjudication was initiated,

19 shall be awarded fees and other expenses as a prevailing
20 party under section 504 of title 5, United States Code,
21 in accordance with the provisions of that section, but with-
22 out regard to whether the position of the Board was sub-
23 stantially justified or special circumstances make an
24 award unjust. For purposes of this subsection, the term
25 ‘adversary adjudication’ has the meaning given that term
26 in section 504(b)(1)(C) of title 5, United States Code.

1 “(b) COURT PROCEEDINGS.—An employer who, or a
2 labor organization that—

3 “(1) is the prevailing party in a civil action, in-
4 cluding proceedings for judicial review of agency ac-
5 tion by the Board, brought by or against the Board,
6 and

7 “(2) had not more than 100 employees and a
8 net worth of not more than \$1,400,000 at the time
9 the civil action was filed,

10 shall be awarded fees and other expenses as a prevailing
11 party under section 2412(d) of title 28, United States
12 Code, in accordance with the provisions of that section,
13 but without regard to whether the position of the United
14 States was substantially justified or special circumstances
15 make an award unjust. Any appeal of a determination of
16 fees pursuant to subsection (a) or this subsection shall be
17 determined without regard to whether the position of the
18 United States was substantially justified or special cir-
19 cumstances make an award unjust.”.

20 **SEC. 403. APPLICABILITY.**

21 (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-
22 tion 20 of the National Labor Relations Act, as added by
23 section 402 of this Act, applies to agency proceedings com-
24 menced on or after the date of the enactment of this Act.

1 (b) COURT PROCEEDINGS.—Subsection (b) of section
2 20 of the National Labor Relations Act, as added by sec-
3 tion 402 of this Act, applies to civil actions commenced
4 on or after the date of the enactment of this Act.

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